



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

SEP 22 1990

BY OVERNIGHT MAIL

Robert L. Rhodes, Jr., Esquire
Holland & Knight
P.O. Box 810
Tallahassee, Florida 32302

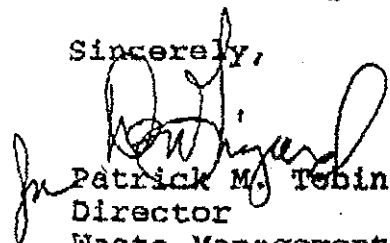
Re: City Industries/City Chemical Site, Winter Park, Florida
United States of America v. City Industries, et al.

Dear Mr. Rhodes:

Attached you will find a copy of the final Consent Decree in the above-referenced matter. The original is being forwarded to you by overnight mail. In consideration of the time constraints involved, I am hopeful that you can have the signature pages from participating parties faxed to us at (404) 347-5246 no later than noon on Friday, September 28, 1990. If signature pages are received no later than the above time and date, the Settling Defendants will be relieved of their obligation to comply with the Unilateral Administrative Order For Remedial Design and Remedial Action, U.S. EPA Docket No. 90-73-C, issued on September 19, 1990.

If you have any questions, or if there is anything I can do to help expedite this matter, please do not hesitate to give me a call. Thank you for your cooperation.

Sincerely,


Patrick M. Tobin
Director

Waste Management Division

cc: Quentin Pair
Larry Morgan

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

CITY INDUSTRIES, INC., et al.,

Defendants.

CIVIL ACTION NO.:

CONSENT DECREE

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
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UNITED STATES OF AMERICA

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v.

CITY INDUSTRIES, INC., et al

Defendants.

CIVIL ACTION NO.:

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, (CERCLA) 42 U.S.C. §§ 9606, 9607.

B. The United States in its Complaint seeks:

(1) reimbursement for monies already spent by EPA for response actions at the City Industries/City Chemical Site, Winter Park, Orange County, Florida, together with accrued interest;

(2) an injunction requiring Defendants to fund studies and response work at that Site and to be liable for the performance of operation and maintenance activities at the Site in conformity with the Record of Decision (as defined below) and the National Contingency Plan ("NCP"), 40 C.F.R. Part 300;

(3) a declaration of Defendants' liability for further

response costs; and

(4) such other relief as the Court finds appropriate.

C. In accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Florida on March 29, 1990, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this settlement.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of Interior and United States Department of Commerce of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship, and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. The Defendants that have entered into this Consent Decree do not admit any liability to the Plaintiff or to any other person or governmental entity arising out of the transactions or occurrences alleged in the Complaint or otherwise allegedly arising out of the generation, storage, treatment, handling, or disposal activities, or actual or threatened release of hazardous substances and pollutants or contaminants at or from the Site.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40

C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 4, 1989, 54 Fed. Reg. 41015 (1989).

G. In response to a release or substantial threat of a release of a hazardous substance at or from the Site, a Remedial Investigation and Feasibility Study (RI/FS) was commenced and completed for the Site pursuant to 40 C.F.R. § 300.430.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on January 23 and 31, 1990, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

I. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on March 29, 1990, on which the State has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

J. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly funded by the Settling Defendants and that the Settling Defendants will properly be responsible for conducting operation and maintenance for the Site.

K. The Parties recognize, and the Court by entering this Consent Decree finds, that implementation of this Consent Decree will

expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345; and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for purposes of enforcing this Consent Decree, Settling Defendants waive all objections and defenses they have to jurisdiction of the Court or to venue in this District and agree not to challenge this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. No change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall alter such Settling Defendant's responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the Exhibits and Appendices attached hereto and incorporated hereunder, the following definitions shall

apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, by the Superfund Amendments & Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

B. "Consent Decree" shall mean this Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

C. "Custody Agreement" shall mean an Agreement substantially in the form attached hereto as Appendix 3, which provides for the establishment and maintenance of a custody account or accounts (hereinafter collectively the "City Chemical Site Custody Account") to fund the Remedial Action and Operation and Maintenance at the Site and provide for the payment of EPA Future Response Costs.

D. "Custodian" shall mean each person or entity including their successors, appointed pursuant to the Custody Agreement to manage the City Chemical Site Custody Account.

E. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

F. "De-Minimis Agreement" shall mean the agreement set forth in Paragraph 12 of this Consent Decree.

G. "De Minimis Defendant" shall mean any Qualified Settling Defendant that elects to participate in the De-Minimis Agreement and complies with the terms thereof.

H. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

I. "FDER" shall mean the Florida Department of Environmental Regulation and any successor departments or agencies of the State.

J. "Future Response Costs" shall mean all costs incurred by the United States in connection with the implementation of this Consent Decree after February 28, 1990, including, but not limited to, the cost of the Remedial Design/Remedial Action, indirect costs that the United States incurs in overseeing the Remedial Design/Remedial Action (RD/RA), as set forth in the ROD, the costs the United States, including the U.S. Department of Justice and EPA Headquarters, incurs in overseeing Settling Defendants' Obligations, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section X (Periodic Review), and the cost of reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Settling Defendants' Obligations, or otherwise implementing this Consent Decree.

K. "Initial Cost Estimate" shall mean the cost estimate for the Remedial Action and Operation and Maintenance for the Site submitted by EPA to the Settling Defendants at the completion of the Remedial Design as set forth in Paragraph 10.

L. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

M. "Non-De Minimis Defendant" shall mean any Settling Defendant that EPA determined has disposed of more than 1% of the known volume of waste material at the Site or any Qualified Settling Defendant that has elected to be a Non-De Minimis Defendant or any Qualified Settling Defendant that fails to pay the amount of money required by Appendix 4 and failed to notify EPA of its election to join the Non-De-Minimis Defendants pursuant to Paragraph 11(b) of this Consent Decree.

N. "Obligations" shall mean all activities Settling Defendants are required to perform under this Consent Decree, including Operation and Maintenance, funding the Remedial Action, and paying Past and Future Response costs except those required by Section XXIII (Retention of Records).

O. "Operation and Maintenance" or "O&M" shall mean all activities required under the Operation and Maintenance Plan developed by EPA pursuant to this Consent Decree that are required to maintain the effectiveness of the Remedial Action (1) after the remedy achieves the performance standards or (2) after expiration of a 10-year period of ground water withdrawal and treatment after the remedy becomes operational and functional, whichever shall first occur.

P. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

Q. "Parties" shall mean the United States and the Settling Defendants.

R. "Past Response Costs" shall mean all costs, including, but not limited to, reimbursement of documented Remedial Design costs, interest and indirect costs, that the United States, including the

U.S. Department of Justice and EPA Headquarters, incurred with regard to this Site prior to February 28, 1990. Provided, however, that this Consent Decree shall not resolve any claim that the United States may have against any Settling Defendant that was not a party to the Consent Decree entered by the United States District Court for the Middle District of Florida on February 22, 1989, in Civil Action No. 87-472-CIV-ORL-18 for any response costs incurred by the United States at or in connection with the Site prior to February 22, 1989, that were not reimbursed to the United States pursuant to said Consent Decree. The Settling Defendants that signed the Consent Decree with the United States that was entered on February 22, 1989, in the United States District Court for the Middle District of Florida, Civil Action No. 87-472-Civ-Orl-18, shall only be liable for past response costs that have accrued since the date of entry of that Consent Decree.

S. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, set forth in the ROD, and Section VIII of this Consent Decree.

T. "Plaintiff" shall mean the United States.

U. "Qualified Settling Defendant" shall mean any Settling Defendant that arranged for disposal of not greater than 1% of the known volume of Waste Material at the Site and that has met the requirements for a de minimis party under Section 122(g), of CERCLA, 42 U.S.C. § 9622(g).

V. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site and all attachments thereto which was

signed on March 29, 1990, by the Regional Administrator, EPA Region IV. The ROD is attached as Appendix 1 and incorporated herein by reference.

W. "Remedial Action" (RA) shall mean those activities, except for Operation and Maintenance, to be funded by the Settling Defendants to implement the final plans and specifications submitted pursuant to the Remedial Design Work Plan and approved by EPA, including, but not limited to, up to 10 years of groundwater treatment pursuant to Section 104(c)(6) of CERCLA, and any additional activities required under Section IX (Additional Response Action) and Section X (U.S. EPA Periodic Review) of this Consent Decree.

X. "Remedial Action Work Plan" shall mean a document prepared by EPA's contractor which describes activities to take place in implementing the remedy outlined in the 100% Remedial Design Document.

Y. "Remedial Design" (RD) shall mean those activities, including, but not limited to, treatability studies and groundwater studies undertaken to develop the final plans and specifications for the Remedial Action.

Z. (30% and 90%) "Remedial Design Document" shall mean a document prepared by EPA's contractor when the design of the remedy is 30% and 90% complete. Design of the remedy includes development of engineering drawings and specifications for the Site cleanup.

AA. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral and including one or more paragraphs.

BB. "Settling Defendant(s)" shall mean those Defendants that are signatories to this Consent Decree.

CC. "Site" shall mean the City Industries/City Chemical Superfund Site, encompassing approximately 1 acre, located at 3920 Forsyth Road in Winter Park, Orange County, Florida, as described in the Record of Decision and depicted on the map attached as Appendix 2. For the purposes of Section 121(e) of CERCLA, the Site shall include the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for the implementation of the Remedial Design and Remedial Action.

DD. "Special Account" shall mean the Site specific account set up pursuant to Section 122(b)(3) of CERCLA by EPA for the purpose of receiving payments from the Settling Defendants for the total funding of the Remedial Action for this Site.

EE. "State" shall mean the State of Florida.

FF. "Supplemental Cost Estimate" shall mean a revised cost estimate for the Remedial Action and Operation and Maintenance for the Site submitted by EPA to the Non-De-minimis Defendants from time to time as set forth in Paragraph 10(c)(5).

GG. "United States" shall mean the United States of America.

HH. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant" or "contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33), and (3) any "hazardous waste" under Section 1004(5) of the Solid Waste Disposal Act, 42 U.S.C. § 6903(5).

II. "Work" shall mean all activities related to the RD/RA required to be performed under this Consent Decree, except those required by Section XXIII (Retention of Records).

V. GENERAL PROVISIONS

4. Objectives of the Parties

The objectives of the parties in entering into this Consent Decree are to protect public health, welfare, and the environment from releases or threatened releases of Waste Material from the Site by the design, and implementation of the Remedial Action and Operation and Maintenance at the Site and to reimburse Plaintiff's Past and Future Response Costs.

5. Purpose of this Consent Decree

The purpose of this Consent Decree is to efficiently and effectively attain the objectives of the parties through the Settling Defendants' agreement to fund the Remedial Action at the Site. In addition, the Settling Defendants agree to be responsible for the performance of the Operation and Maintenance at the Site, and to reimburse all of Plaintiff's Past and Future Response Costs for the Site that are not inconsistent with the NCP.

6. Commitments by Settling Defendants

a. Settling Defendants shall finance the RA at the Site, in accordance with this Consent Decree, and shall be responsible for the performance of any Operation and Maintenance required for the Site. Settling Defendants shall also reimburse the United States for all Past Response Costs and Future Response Costs that are not inconsistent with the NCP as provided in this Consent Decree.

b. The Settling Defendants are obligated to finance and perform O&M at the Site pursuant to an O&M Plan submitted to them by EPA. Concurrently with the submission of the O&M Plan, EPA will submit to the Settling Defendants a document containing other

procedures and requirements (Procedures and Requirements Document) that must be complied with during the implementation of the O&M Plan. The Settling Defendants shall have thirty (30) days from receipt to submit written comments to EPA on the O&M Plan and the Procedures and Requirements Document. Within thirty (30) days after receipt, EPA will respond in writing to Settling Defendants' comments, and submit to the Settling Defendants a final O&M Plan and Procedures and Requirements Document. The Settling Defendants may dispute the final O&M Plan and/or the Procedures and Requirements Document by initiating the dispute resolution procedures set forth in Section XVII of this Consent Decree. Thirty (30) days after EPA's submission of the final O&M Plan and Procedures and Requirements Document or at the conclusion of the dispute resolution process, whichever shall first occur, the O&M Plan and Procedures and Requirements Document shall be incorporated into this Consent Decree as Appendix 6 and become enforceable under this Consent Decree.

c. The obligations of Settling Defendants to finance the RA, perform the the Operation and Maintenance, and to reimburse the United States for Past and Future Response Costs under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law

All activities and Obligations undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state

laws and regulations.

8. State Involvement

Pursuant to Section 121(f) of CERCLA, EPA shall provide the State with a reasonable opportunity for review and comment on each of the following:

1. The remedial design; and
2. Technical data and reports relating to implementation of the remedy including all subplans and other pertinent documents.

VI. FUNDING OF THE WORK BY SETTling DEFENDANTS

9. The Settling Defendants shall pay the Past Response Costs and Future Response Costs in accordance with the terms of this Consent Decree. EPA will undertake and perform the RA at this Site with funds provided to the Special Account by the Settling Defendants. Funding of Settling Defendants' Obligations under this Consent Decree shall be required as set forth below.

10. Custody Account

a. Within thirty (30) days of lodging of this Consent Decree, Settling Defendants shall present to EPA for review a fully executed custody agreement ("Custody Agreement") establishing the City Chemical Site Custody Account ("Custody Account"). EPA's review of the Custody Agreement does not constitute an assurance of the financial sufficiency of the Custody Account. Money paid into the Custody Account Fund by the various Settling Defendants shall be used solely to pay for Settling Defendants' Obligations pursuant to this Consent Decree, including expenses of administering the Custody Account. The Custody Agreement shall confer upon the Custodian(s) all powers and authorities necessary to collect, hold, manage, invest

and distribute the funds necessary to fund the Remedial Action, and to pay all other costs Settling Defendants are required to pay under this Consent Decree. Settling Defendants may execute more than one Custody Agreement and establish more than one Custody Account as deemed appropriate by the Settling Defendants provided that each such Custody Agreement and Custody Account shall comply with the requirements of this Paragraph. The Settling Defendants shall be in compliance with the requirements for funding set forth in this Paragraph 10 if the cumulative amount of money in all of the Custody Accounts is equal to or exceeds the required funding levels.

b. Notwithstanding anything in the Custody Agreement, Settling Defendants shall be responsible for compliance with this Consent Decree. Settling Defendants shall provide EPA with written notice at least ten (10) days in advance of any proposed change in the Custody Agreement or of one of the Custodians.

c. Payment shall be made into the Custody Account as follows:

(1) Within thirty (30) days of entry of this Consent Decree, the Settling Defendants shall pay into the Custody Account one million (1,000,000) dollars.

(2) Within forty (40) days after Settling Defendants' receipt from EPA of the Initial Cost Estimate, each De Minimis Settling Defendant shall pay to this account the amount calculated in accordance with the procedures set forth in Appendix 4 into the Custody Account.

(3) Within sixty (60) days after Settling Defendants' receipt of the Initial Cost Estimate, the Non-De Minimis Settling Defendants

shall pay monies into the Custody Account in such amount as is necessary, if any, to make the total amount in the Custody Account at least equal to the estimated costs of construction of the ground water withdrawal, treatment, and disposal system to be constructed at the Site, plus a fifty (50) percent premium for possible cost overruns, Future Response Costs, and other exigencies.

(4) Within sixty (60) days after Settling Defendants' receipt from EPA of written notification that construction of the ground water withdrawal, treatment and disposal system at the Site has been eighty percent (80%) completed, or within three (3) years of the effective date of this Consent Decree, whichever shall first occur, the Non-De Minimis Settling Defendants shall pay monies into the Custody Account in the amount necessary to assure that the Custody Account contains a sum equal to the then estimated costs necessary to complete Remedial Action and Operation and Maintenance for the Site plus a twenty percent (20%) premium for possible cost overruns, Future Response Costs, and other exigencies.

(5) With regard to Paragraphs 10(c)(3) and (4) above, at any time before Certification of Completion, EPA may, at its option, require the Non-De Minimis Defendants to pay additional sums of money into the Custody Account so that the amount of money in the Custody Account is not less than the latest Supplemental Cost Estimate for the Work to be performed under each of paragraphs 10(c)(3) and (4) plus the premium required under each paragraph. Such additional funds shall be received into the Custody Account within thirty (30) days after the Non-De Minimis Defendants receive written notification from EPA that these additional monies are required.

d. The Custody Agreement shall provide that the Custodian shall, within sixty (60) days of entry of this Consent Decree and every ninety (90) days thereafter, submit to the Settling Defendants and EPA, financial reports that show the amount of money then currently in the City Chemical Site Custody Account. Nothing in the Custody Agreement shall relieve the Settling Defendants of their responsibility to ensure that the funding of the RA is uninterrupted or its responsibility to comply with any and all other Obligations under this Consent Decree.

e. The Settling Defendants may maintain a separate Custody Account clearly demarked for the collection and disbursement of funds to be expended for the cost of internal administration, oversight and other matters associated with the Site; however, the amount of money in such Custody Account will not be considered in any demonstration that Settling Defendants are in compliance with the required funding levels under this Consent Decree.

11. De Minimis Settlement

a. EPA has determined that many of the Settling Defendants are Qualified Settling Defendants. The names of Qualified Settling Defendants are listed in Appendix 4 attached hereto and incorporated into this Consent Decree by reference. Until such time as a Qualified Defendant elects to become a De Minimis Defendant and pay the required amount of money into the City Chemical Custody Account, the liability of the Qualified Settling Defendants will be the same as the Non-De Minimis Defendants.

b. Appendix 4 also sets forth a formula by which each Qualified Settling Defendant can determine the amount of money it

must pay to limit its further liability at the Site pursuant to Paragraph 12 (De Minimis Agreement). The amount that each De Minimis Defendant is liable for cannot be determined until the Initial Cost Estimate for the RA and O&M is submitted to the Settling Defendants. Within forty (40) days after receipt of the Initial Cost Estimate, each Qualified Settling Defendant shall pay the amount of money required by Appendix 4 into the City Chemical Site Custody Account or notify EPA in writing, of its election to join the Non-De Minimis Defendants and share their joint and several liability to comply with the terms of this Consent Decree. Any Qualified Settling Defendant that fails to pay the amount required by Paragraph 12 (De Minimis Agreement) and Appendix 4 into the City Chemical Site Custody Agreement Fund shall be deemed by EPA to be a Non-De Minimis Defendant.

c. De Minimis Defendants shall not be liable for Future Response Costs that are incurred after implementation of the De Minimis Settlement or for stipulated penalties (Section XVIII) or indemnification obligations (Section XV) that arise from acts or omissions that occur after implementation of the De Minimis settlement.

12. De Minimis Agreement

The provisions of this Paragraph are only applicable to De Minimis Defendants.

a. The De Minimis settlement involves only a minor portion of the response costs at the Site with respect to each De Minimis Defendant;

b. Information currently known to the United States indicates that the amount of hazardous substances contributed to the

Site by each De Minimis Defendant does not exceed 1% of the hazardous substances at the Site, and that the toxic or other hazardous effects of the hazardous substances contributed to the Site by each De Minimis Defendant do not contribute disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site.

c. The Regional Administrator has, therefore, determined that the amount of hazardous substances contributed to the Site by each De Minimis Defendant and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each De Minimis Defendant are minimal in comparison to other hazardous substances at the Site.

d. The United States and each De Minimis Defendant agree that settlement of this case without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action.

PAYMENT

e. (1) Each De Minimis Defendant shall pay to the City Chemical Site Custody Account the amount calculated in accordance with the formula set forth in Appendix 4 to this Consent Decree, which is incorporated herein by reference, in accordance with Paragraph 11 (De Minimis Settlement) of this Consent Decree.

(2) Each payment shall be made by certified or cashier's check made payable to the City Chemical Site Custody Account. Each check shall reference the Site name, the name and address of the Settling Party, and the civil action number of this case.

(3) Each Settling Defendant shall simultaneously send a copy of its check to:

Frank S. Ney, Assistant Regional Counsel
U.S. Environmental Protection Agency, ORC
345 Courtland Street, NE
Atlanta, Georgia 30365

Diane Scott
U.S. Environmental Protection Agency
Waste Management Division, SSRB
345 Courtland Street, NE
Atlanta, Georgia 30365

CERTIFICATION OF DE MINIMIS DEFENDANTS

f. Each De Minimis Defendant certifies that, to the best of its knowledge and belief, it has provided to the United States all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents which relates in any way to the ownership, operation, transportation for disposal or treatment, or arrangement for transportation for disposal or treatment of hazardous substances at or in connection with the Site.

COVENANT NOT TO SUE

g. (1) Subject to the reservations of rights in Paragraph 12(h)(1) of this Consent Decree, upon payment of the amounts specified in this Consent Decree, the United States covenants not to sue or to take any other civil or administrative action against any of the De Minimis Defendants for "Covered Matters." "Covered Matters" shall include any and all civil liability pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a), and Section 7003 of RCRA, 42 U.S.C. 6973, with regard to the Site.

(2) In consideration of the United States' covenant not to sue in Paragraph 12(g)(1), the De Minimis Defendants agree not to

assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of Covered Matters, or, to seek any other costs, damages, or attorney's fees from the United States arising out of response activities at the Site.

RESERVATION OF RIGHTS

h. (1) Nothing in this Paragraph is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any of the De Minimis Defendants for:

- (i) any liability as a result of failure to make the payments required by this Paragraph;
- (ii) any matters not expressly included in Covered Matters, including, without limitation, any liability for damages to natural resources;
- (iii) any claim that the United States may have against the Settling Defendants listed in Appendix 5 for Past Response Costs that were incurred by the United States prior to February 22, 1989 and that were not paid to the United States under the terms of the Consent Decree entered on that date by the United States District Court for the

Middle District of Florida in Civil Action No. 87-472-CIV-ORL-18. This reservation of rights applies only to the Settling Defendants listed on Appendix 5 and has no effect on any other Settling Defendants; and

(iv) any claim that the United States may have against Settling Defendant, Southern Film Extruders, Inc., arising out of the transportation for disposal of hazardous substances at or in connection with the Site from the Master Packaging facility.

(2) Nothing in this Paragraph constitutes a covenant not to sue or to take action or otherwise limit the ability of the United States to seek or obtain further relief from any of the De Minimis Defendants, and the covenant not to sue in this Paragraph is null and void if:

(i) information not currently known to the United States is discovered which indicates that any De Minimis Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that the De Minimis Defendant no longer qualifies as a de minimis party at the Site because the De Minimis Defendant contributed greater than 1% of the hazardous substances at the Site or contributed disproportionately to the cumulative toxic or other hazardous effects of the hazardous

substances at the Site;

(ii) De Minimis defendants breach one or more of the expressed warranties set out in Paragraph 12f above; or

(iii) any claim that the United States may have against Settling Defendant, Southern Film Extruders, Inc., arising out of the transportation for disposal of hazardous substances at or in connection with the Site from the Master Packaging facility.

(3) Nothing in this Paragraph is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity that is not a De Minimis Defendant under this Consent Decree.

(4) The United States and the De Minimis Defendants agree that the actions undertaken by the De Minimis Defendants in accordance with this Paragraph do not constitute an admission of any liability by any De Minimis Defendant.

CONTRIBUTION PROTECTION

1. Subject to the reservations of rights in this Paragraph, the United States agrees that by entering into and carrying out the terms of this Paragraph, each De Minimis Defendant will have resolved its liability to the United States for Covered Matters pursuant to Section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5), and shall not be liable for claims for

contribution for Covered Matters.

13. Election Not To Fund the Work at the Site

a. Within thirty (30) days after the Settling Defendants receive EPA's Initial Cost Estimate, if the Initial Cost Estimate exceeds seven million (7,000,000) dollars, the Settling Defendants may elect (collectively not separately), by written notification to EPA, not to fund the Work at the Site and declare all parts of this Consent Decree regarding such funding and regarding Settling Defendants' responsibility for O&M under this Consent Decree null and void. All other parts of this Consent Decree, including Settling Defendants' liability for Past Response Costs, and all Future Response Costs incurred as of the date of the election will remain enforceable through this Consent Decree. An election by the Settling Defendants under this Paragraph will only be valid if timely and in writing as required above. It is agreed by the Parties to this Consent Decree that the Settling Defendants' exercise of their option to elect not to fund the Work at the Site in no way affects or limits the Settling Defendants' liability under CERCLA or other laws for the Cleanup of the Site.

b. The Settling Defendants acknowledge and agree that the Initial Cost Estimate represents only an approximate valuation of the costs of the RA and O&M at the Site. After the issuance of the Initial Cost Estimate, ~~Non-De Minimis~~ Defendants remain liable to pay for the cost of the RA and O&M, even if the actual costs exceed EPA's Initial Cost Estimate.

14. Payments into the Special Account

a. The Non-~~De~~ Minimis Defendants shall jointly and severally pay monies into the Special Account as requested by EPA to fund the RA at the Site. Such amounts shall be paid into the Special Account within fifteen (15) days of the Non-~~De~~ Minimis Defendants' receipt of notification from EPA requesting such funds. The initial request for such funds will not occur until the expiration of the deadline for Settling Defendants' election pursuant to Paragraph 13 above.

b. EPA agrees, that to the extent practicable, payments requested into the Special Account will be phased so that only funds necessary to enable EPA or its contractor(s) to perform a specific part of the Work at the Site will be required to be placed into the Special Account at any given time. For example, there may be a construction phase followed by several pump and treat phases. The purpose of phased funding is to minimize the amount of money in the Special Account, without risking a shortfall of funds which could result in the interruption of the cleanup of the Site. A fifty (50) percent premium for cost overruns and other exigencies will be added to the amount of money requested (cost estimate) by EPA for construction of the groundwater withdrawal, treatment, and disposal system. All subsequent requests for payment of money into the Special Account will include a twenty (20) percent premium for cost overruns and other exigencies.

c. The payments required by this Paragraph shall be made by certified check(s) payable to "EPA Hazardous Substance

Superfund" and shall be remitted to: the United States Environmental Protection Agency, Region IV, Attention Superfund Accounting, P.O. Box 100142, Atlanta, Georgia 30384. The checks shall be accompanied by correspondence identifying the payment for the EPA Region IV City Industries Superfund Site RD/RA Consent Decree funding for the Remedial Action, along with the name and the identity of the paying party(s), case caption, and Civil Action File Number. Simultaneously with the tendering of such payments, notice of such payments, including a copy of the checks, shall be mailed to EPA, as follows:

Frank S. Ney, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region IV
345 Courtland Street
Atlanta, Georgia 30365

Diane Scott, Remedial Project Manager
Waste Management Division
U.S. Environmental Protection Agency
Region IV
345 Courtland Street
Atlanta, Georgia 30365

Will Waisner
Financial Management Office
U.S. Environmental Protection Agency
Region IV
345 Courtland Street
Atlanta, Georgia 30365

d. All money remaining in the Special Account after the Settling Defendants have totally funded the RA will be used as payment to the United States for any remaining unreimbursed Past Response Costs for the Site.

15. EPA and Settling Defendants agree that notwithstanding the existence of the City Chemical Site Custody Account, the Non-De

Minimis Defendants are jointly and severally liable to fund the RA and O&M, to pay Future Response Costs, to perform O&M, and to comply with all other Obligations under this Consent Decree.

16. Settling Defendants agree that any payments EPA requests that the Settling Defendants make into the City Chemical Custody Account or the Special Account, will be timely paid in accordance with this Consent Decree, provided that the EPA Project Coordinator certifies that the Cost Estimate or other document(s) upon which the payment is required, is true and accurate to the best of his/her knowledge, subject to the Settling Defendants' right to review the validity of RA costs pursuant to Paragraph 17.

17. Settling Defendants may request in writing, but not more than annually, that EPA provide Settling Defendants with an accounting of the Remedial Action costs expended from the Special Account for the period covered by the report. EPA will request the accounting documents from the appropriate department of the Agency and submit the accounting to the Settling Defendants' Project Coordinator within two weeks after the documents are provided to the EPA Project Coordinator. An "accounting" as used in this Paragraph shall include adequate documentation to accurately describe the basis of all costs, including SPUR reports, and all documentation underlying such SPUR reports, including invoices, time sheets, travel vouchers and all information available to adequately identify such individual charges that form all cumulative amounts paid out from the Special Account during the reporting period. However, any privileged or confidential matter included in EPA's accounting process will be withheld by the United States. The Settling Defendants will bear all

the expenses incurred by EPA in providing the foregoing accounting information. The Settling Defendants may seek review of any payment from the Special Account under this Paragraph if within 60 days of receipt of the accounting, they notify EPA that any such payment was made in error or was inconsistent with the NCP, and initiate the dispute resolution procedures in Section XVII, Paragraph 44.

VII. REVIEW OF REMEDIAL DESIGN DOCUMENTS AND REMEDIAL ACTION
WORKPLAN

18. EPA will submit to Settling Defendants' Project Coordinator for comment before finalization the Thirty (30) Percent Remedial Design Document, the Ninety (90) Percent Remedial Design Document, and the Remedial Action Work Plan. Settling Defendants will have thirty (30) days to review and submit written comments to EPA on the above documents. EPA will consider the Settling Defendants' comments and, at its discretion, revise the documents. EPA will submit any revised document to Settling Defendants' Project Coordinator before finalizing the document or will notify him/her that no revisions were made. Each document will then become final unless within fifteen (15) days after resubmission to the Settling Defendants' Project Coordinator, he/she invokes the Dispute Resolution Procedures set forth in Section XVII, Paragraph 43 of this Consent Decree.

VIII. PERFORMANCE STANDARDS

19. The Work and O&M performed pursuant to this Consent Decree will achieve the Performance Standards contained in the ROD including the ground water standards, criteria, and guidelines as delineated in Table 7-1 of the ROD, and the fresh-water aquatic life criteria as delineated in Table 7-2 of the ROD, and other Applicable, or Relevant

and Appropriate, Requirements necessary to carry out the remedy selected in the ROD as determined during the Remedial Design.

20. Settling Defendants acknowledge and agree that nothing in this Consent Decree or the Remedial Design or Remedial Action Work Plans constitute a warranty or representation of any kind by Plaintiff that compliance with this Consent Decree will achieve the Performance Standards set forth in Paragraph 19 of this Consent Decree.

IX. ADDITIONAL RESPONSE ACTIONS

21. In the event that EPA determines that additional response actions are necessary to meet the Performance Standards described in Paragraph 19 of this Consent Decree or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided to the project coordinator for the Settling Defendants.

22. Any additional response actions that EPA determines are necessary to implement the remedy described in the ROD shall be funded by Settling Defendants. The Settling Defendants shall not be required under this Consent Decree to fund any additional response actions that are necessary to implement any fundamental change to the remedy selected in the ROD that would require the preparation of an amendment to the ROD. The parties agree that in the event of a ROD amendment they will negotiate in good faith to reach an agreement to fund or implement the remedy in the amended ROD.

23. Settling Defendants may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance

Standards or to carry out the remedy selected in the ROD as being arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record.

X. U.S. EPA PERIODIC REVIEW

24. Until such time as EPA notifies the Settling Defendants pursuant to Section XIII (Certification of Completion), EPA will perform any studies and investigations necessary to conduct reviews at least every five (5) years after the initiation of the Remedial Action as required by Section 121(c) of CERCLA and any applicable regulations.

25. If required by Sections 113(k)(2) or 117 of CERCLA, Settling Defendants and the public shall be provided with an opportunity to comment on any additional response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region IV, shall determine in writing whether additional response actions are appropriate.

26. If the Regional Administrator, EPA Region IV, determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, indicates that the Remedial Action is not protective of human health and the environment, the Settling Defendants shall fund any additional response actions EPA has determined are appropriate in accordance with Section IX of this Consent Decree. However, the Settling Defendants may invoke the procedures set forth in Section XVII

(Dispute Resolution) to dispute EPA's determination that additional response actions are appropriate or that the additional response actions ordered are arbitrary and capricious or otherwise not in accordance with law. Such a dispute shall be resolved on the administrative record.

XI. PROJECT COORDINATORS

27. Within twenty (20) days of lodging this Consent Decree, Settling Defendants and EPA shall notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor shall be given to the other parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be the Chairperson of the City Chemical Site Executive Committee or his/her designee and shall have the expertise sufficient to adequately oversee the aspects of Settling Defendants' Obligations being performed under this Consent Decree during the period of his/her service as Project Coordinator.

28. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) by the

National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when he or she determines that conditions at the Site that cause or threaten a release of Waste Material constitute an emergency situation or may present an immediate threat to public health or welfare or the environment.

XII. ASSURANCE OF ABILITY TO COMPLETE WORK

29. Within ninety (90) days of lodging of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of \$6,000,000 in one of the following forms:

- (a) A safety bond
- (b) One or more letters of credit,
- (c) A trust fund,
- (d) A guarantee to perform Settling Defendants' Obligations under this Consent Decree by one or more parent corporations, subsidiaries, or unrelated corporations which have a substantial business relationship with at least one of the Settling Defendants;
- (e) A demonstration pursuant to Paragraph 31 that one or more of the Settling Defendants pass the financial test specified in 40 C.F.R. Part 265.143(e); or
- (f) Another mechanism or procedure acceptable to EPA.

30. The amount of financial security required by Paragraph 29 shall be reduced by the total amount of the payments received from

De Minimis Defendants pursuant to Paragraph 11 of this Consent Decree as of forty (40) days following receipt by the Settling Defendants of the Initial Cost Estimate. The Settling Defendants' Obligation to provide any financial security pursuant to Paragraph 29 shall terminate at such time as the payment required by the Non-De Minimis Defendants pursuant to Paragraph 10(c)(4) of this Consent Decree is paid into the Custody Account, provided, however, prior to termination of the financial security pursuant to this section, Settling Defendants must receive written approval from EPA.

31. For the purposes of Paragraph 29(e) the references of 40 C.F.R. § 265.143(e) to "current closure and post-closure cost estimates" shall be deemed to refer to the amount of financial security required under Paragraph 29 of this Consent Decree. Settling Defendants shall comply with Paragraph 29(e) by providing to EPA a copy of independently audited, year end financial statements (such as those filed with the Securities and Exchange Commission) for the latest fiscal year for one or more Settling Defendant demonstrating that such Settling Defendant or Settling Defendants meet the tests set forth in 40 C.F.R. § 265.143(e)(1). The Settling Defendants shall update any demonstration made under Paragraph 29(e) annually from the date of submittal of the initial demonstration by providing a copy of the most recent independently audited year end financial statements for those Settling Defendants making the demonstration. If the Settling Defendants seek to demonstrate financial security in accordance with Paragraph 29(d), any proposed guarantor shall demonstrate its compliance with the financial test specified in 40 C.F.R. § 265.143(e)(1) in the manner described

above in this Paragraph 31. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Paragraph are inadequate, Settling Defendants shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 29 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to perform their Obligations under this Consent Decree shall not excuse performance of any activities required under this Consent Decree.

XIII. CERTIFICATION OF COMPLETION

32. Completion of the Remedial Action

If EPA concludes, based on the initial or any subsequent Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA shall so certify in writing to the Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XIX (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action does not in any way affect Settling Defendants' remaining obligations under this Consent Decree, Operation and Maintenance, record retention, indemnification, and payment of Future Response Costs and penalties.

33. Completion of Settling Defendants' Obligations

a. Within ninety (90) days after Settling Defendants conclude that all phases of their Obligations, including O&M, with the exception of the payment of Future Response Costs associated with this Paragraph, have been fully performed, Settling Defendants shall so certify to the United States by submitting a written report by a registered professional engineer and their Project Coordinator certifying that their Obligations with the exception of the requirements of Section XXIII (Retention of Records) have been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

"I certify that the information contained in or accompanying this submission is true, accurate, and complete."

If after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Settling Defendants' Obligations under this Consent Decree, with the exception of the requirements of Section XXIII (Retention of Records), have not been completed in accordance with this Consent Decree, EPA shall notify Settling Defendants in writing of the activities that must be undertaken to complete their Obligations. Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

b. If EPA concludes based on the initial or any subsequent Certification of Completion of Settling Defendants' Obligations and after a reasonable opportunity for review and comment by the State that the Obligations of the Settling Defendants, with the exception of the requirements of Section XXIII have been fully performed in accordance with this Consent Decree, EPA shall so notify the Settling Defendants in writing.

XIV. REIMBURSEMENT OF RESPONSE COSTS

34. Within thirty (30) days of the effective date of this Consent Decree, Settling Defendants shall:

Pay to EPA \$117,655.77, plus interest on this amount at the rate established pursuant to CERCLA Section 107 from February 22, 1989 (the date of entry of a previous Consent Decree for past response costs at this Site) to the effective date of this Consent Decree, in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," and referencing CERCLA Number 4PA7 and DOJ Case Number 90-11-3-179A in reimbursement of Past Response Costs. The Settling Defendants shall forward the certified check(s) to the United States Environmental Protection Agency, Region IV, ATTENTION: Superfund Accounting, P. O. Box 100142, Atlanta, Georgia 30384. The Settling Defendants shall send copies of the check and any transmittal letter(s) to the Department of Justice and the EPA pursuant to the notice provisions of Section XXIV of this Consent Decree.

35. Settling Defendants shall reimburse the United States

for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States. The United States shall send Settling Defendants a demand for payment of such costs, together with an accounting of the cost demand on a periodic basis. An "accounting" as used in this Paragraph shall include adequate documentation to accurately describe the basis of all costs, including SPUR reports, and all documentation underlying such SPUR reports, including invoices, time sheets, travel vouchers, and all information available to adequately identify each individual charge that forms all cumulative amounts provided in the demand. However, any privileged or confidential matter included in EPA's accounting process will be withheld by the United States. The Settling Defendants will bear all the expenses incurred by EPA in providing the accounting information. Settling Defendants shall make all payments in the manner described in Paragraph 34, within thirty (30) days of Settling Defendants' receipt of each bill requiring payment.

36. Settling Defendants may contest payment of any Future Response Costs under Paragraph 35 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs which are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the demand and must be sent to the United States pursuant to Section XXIV (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the

Settling Defendants shall within the thirty (30) day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 34. Simultaneously, the Settling Defendants shall confirm to the United States in writing that funds at least equivalent to the amount of the contested Future Response Costs are maintained in the City Chemical Site Custody Account. With regard to any objection, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XVII (Dispute Resolution) within thirty (30) days of receipt of the demand under paragraph 35. If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Defendants shall direct the Custodian to remit the disputed funds (with accrued interest) to the United States in the manner prescribed in Paragraph 34. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall retain that portion of the costs for which they did prevail in the Custody Account and shall remit that portion of the costs, if any, for which they did not prevail (with accrued interest) to the United States in the manner prescribed in Paragraph 34. The dispute resolution procedures set forth in this Paragraph shall be the ~~exclusive~~ exclusive mechanism for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

37. In the event that the payments required by Paragraph 34 are not made within thirty (30) days of the effective date of this Consent Decree or the payments required by Paragraph 35

within thirty (30) days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest on Past Response Costs shall begin to accrue thirty (30) days after entry of the Consent Decree. The interest on Future Response Costs shall begin to accrue thirty (30) days after the Settling Defendants' receipt of the bill. Payments made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section.

XV. INDEMNIFICATION

38. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States, and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or costs incurred by the United States including but not limited to, attorneys fees' and other expenses of litigation and settlement arising from, or on account of acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out their Obligations pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling

Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out their Obligations pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.

XVI. FORCE MAJEURE

39. "Force Majeure" is defined for the purpose of this Consent Decree as an event arising from causes beyond the reasonable control of the Settling Defendants, which delays or prevents the performance of any Obligation under this Consent Decree. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, or non-attainment of the remedy as set forth in the ROD.

40. When circumstances occur which may delay or prevent performance of Settling Defendants' Obligations under the Consent Decree, whether or not due to a Force Majeure event, the Settling Defendants shall notify the EPA Project Coordinator orally of the circumstances within twenty-four (24) hours after they first become aware of them. If the Project Coordinator is unavailable, the Settling Defendants shall notify the Director of the Waste Management Division, EPA, Region IV. The Settling Defendant shall supply to the Plaintiff in writing an explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measures taken and to be taken by the Settling Defendants to

prevent or minimize the delay or correct the noncompliance, and the timetable for implementation of such measures within ten (10) days of timely oral notification to EPA. Failure to provide timely oral notification to EPA shall constitute a waiver of any claim of Force Majeure.

41. If EPA agrees that a delay is or was attributable to a Force Majeure event, the United States shall provide such additional time to the Settling Defendants to carry out the delayed Obligations as may be necessary to compensate for the delay caused by the Force Majeure event, which time shall be no longer than the length of the delay itself.

42. If EPA and the Settling Defendants cannot agree that any delay in the achievement of the requirements of this Consent Decree, including the failure to submit any report or document, has been or will be caused by circumstances beyond the reasonable control of the Settling Defendants, or cannot agree on the date or time period for completion of the delayed Obligations, the dispute shall be resolved in accordance with the provisions of the Dispute Resolution clause (Section XVII) of this Consent Decree.

XVII. DISPUTE RESOLUTION

43. For purposes of disputes involving Section VII (Review of Remedial Design Documents and Remedial Action Work Plan), the following Dispute Resolution procedure will apply:

a. Any such dispute(s) shall, in the first instance, be the subject of informal negotiations between EPA and the Settling Defendants for a period of up to fifteen (15) days

from the time EPA and/or the Settling Defendants give notice of the existence of the dispute. The period for negotiations may be extended by written agreement between EPA and the Settling Defendants.

b. In the event that the parties cannot resolve a dispute by informal negotiations under Paragraph 43 of this Section, the parties shall, within fifteen (15) days of the final day of the time allowed in Paragraph 43 of this Section, submit the dispute in writing to the Director of the Waste Management Division, EPA Region IV. Any party involved in the dispute must submit its position to the Director within this fifteen (15) day period. All comments by any Settling Defendant to the Director related to the dispute and/or any other matter related to this action shall be submitted in writing with copies to all other parties. The Director, or his delegate, shall render a written decision as expeditiously as possible within fifteen (15) days of the submittal of the dispute, which decision will be binding on the parties.

c. In any dispute resolution proceeding involving matters covered by Section 133(j)(2) of CERCLA, 42 U.S.C. §9613(j)(2), the decision maker shall apply the standards and provisions of Section 133(j)(2). For any other dispute, the decision maker shall determine the appropriate standard of review. In all disputes covered by this Paragraph, the burden of proof shall rest with the Settling Defendants.

44. For disputes involving Section VI (Funding of the Work

by Settling Defendants), the following Dispute Resolution procedure will apply:

a. Any such dispute(s), shall, in the first instance, be the subject of informal negotiations between EPA and the Settling Defendants for a period of up to fifteen (15) days from the time EPA and/or the Settling Defendants give notice of the existence of the dispute. The period for negotiations may be extended by written agreement between EPA and the Settling Defendants.

b. In the event that the parties cannot resolve a dispute by informal negotiations under Paragraph 44 of this Section, the parties shall, within fifteen (15) days of the final day of the time allowed in Paragraph 44 of this Section, submit the dispute in writing to the Director of the Waste Management Division, EPA, Region IV. Any party involved in the dispute must submit its position to the Director within this fifteen (15) day period. All comments by any Settling Defendant to the Director related to the dispute and/or any other matter related to this action shall be submitted in writing with copies to all other parties. The Director, or his delegate, shall render a written decision as expeditiously as possible within fifteen (15) days of the submittal of the dispute, which decision will be binding on the parties. Provided, however, dispute resolution invoked pursuant to this Paragraph may be appealed further by submitting the dispute in writing to the Regional Administrator, Region IV, within fifteen (15) days of the Waste Management Director's decision. The Regional

Administrator shall render a written decision within thirty (30) days of the submission of such dispute, which decision shall be binding upon the parties without the right to further appeal.

c. In any dispute resolution proceeding involving matters covered by Section 133(j)(2) of CERCLA, 42 U.S.C. § 9613(j)(2), the decision maker shall apply the standards and provisions of Section 133(j)(2). For any other dispute, the decision maker shall determine the appropriate standard of review. In all disputes covered by this Paragraph, the burden of proof shall rest with the Settling Defendants.

45. All other disputes are to be governed by the following Dispute Resolution procedure:

a. Any other dispute which arises under or with respect to this Consent Decree, shall, in the first instance, be the subject of informal negotiations between EPA and the Settling Defendants for a period of up to fifteen (15) days from the time EPA and/or the Settling Defendants give notice of the existence of the dispute. The period for negotiations may be extended by written agreement between EPA and the Settling Defendants.

b. In the event that the parties cannot resolve a dispute by informal negotiations under Paragraph 45 of this Section, the parties shall, within fifteen (15) days of the final day of the time allowed in Paragraph 45 of this Section, submit the dispute in writing to the Director of the Waste Management Division, EPA, Region IV. Any party involved

in the dispute must submit its position to the Director within this fifteen (15) day period. All comments by any Settling Defendant to the Director related to the dispute and/or any other matter related to this action shall be submitted in writing with copies to all other parties. The Director, or his delegate, shall render a written decision as expeditiously as possible within fifteen (15) days of the submittal of the dispute, which decision will be binding on the parties.

c. The decision or interpretation of the Director of the Waste Management Division, or of his delegate, as provided under Paragraph 45 of this Section, shall be considered binding unless, within fifteen (15) days after the date of the Director's written decision, Settling Defendants file a petition with this Court setting forth the matter in dispute and the relief requested. Except as otherwise agreed to by the parties, the filing of a petition asking the Court to resolve a dispute shall not serve to extend or postpone the Settling Defendant's Obligations under this Consent Decree. Payment of stipulated penalties with respect to the disputed issue(s) shall be stayed, and Settling Defendants reserve the option, at their risk, of not performing the disputed task(s) pending resolution of the dispute provided, however, that Settling Defendants shall not delay any payment to the Custody Account or to the Special Account as required under this Consent Decree. In the event that the Settling Defendants do not prevail in the dispute, stipulated penalties shall be assessed and paid as provided in Section XVIII of this Consent Decree.

d. In any dispute resolution proceeding involving matters covered by Section 133(j)(2) of CERCLA, 42 U.S.C. § 9613(j)(2), the Court shall apply the standards and provisions of Section 133(j)(2). For any other dispute arising under the Decree, the Court shall determine the appropriate standard of review. In all disputes covered by this Paragraph, the burden of proof shall rest with the Settling Defendants.

XVIII. STIPULATED PENALTIES

46. Settling Defendants shall be jointly and severally liable for stipulated penalties in the amounts set forth in Paragraphs 47, 48, and 49, to the United States for failure to comply with the requirements of this Consent Decree specified below. "Compliance" by Settling Defendants shall include completion of their Obligations under this Consent Decree, within the specified time schedules established by and approved under this Consent Decree.

47. Schedule of Payments for Stipulated Penalties

SCHEDULE A

Penalty Per Violation
Per Day

Period of Noncompliance

\$ 5,000

1st through 14th day

\$10,000

15th through 30th day

\$15,000

31st day and beyond

The Schedule A payments will apply to any noncompliance of this Consent Decree identified below:

a. Payments of all monies required to be paid into the Special Account under Section VI (Funding of Work by Settling Defendants), Paragraph 14 of this Consent Decree.

b. Performance of O&M for the Site consistent with the O&M Plan, Procedures and Requirements Document, and any modification thereto.

c. Payment of monies into the City Chemical Site Custody Account as required by Section VI, Paragraph 10 of this Consent Decree.

d. Payment of all monies required to be paid under Section XIV (Reimbursement of Response Costs) of this Consent Decree.

e. Performance or funding of Additional Response Actions required under Sections IX and X (Additional Response Actions, and EPA Periodic Review) of this Consent Decree.

f. Failure to present a fully executed Custody Agreement to EPA as required by Section VI (Funding of Work by Settling Defendants), Paragraph 10(a) of this Consent Decree.

SCHEDULE B

<u>Penalty Per Violation</u> <u>Per Day</u>	<u>Period of Noncompliance</u>
\$ 3,000	1st through 14th day
\$ 6,000	15th through 30th day
\$10,000	31st day and beyond

The Schedule B payments will apply to any noncompliance of this Consent Decree identified below:

g. Failure to provide EPA written notice as required by

Section VI, Paragraph 10(b) of this Consent Decree.

h. Submittal of financial reports as required by Section VI, Paragraph 10(d) of this Consent Decree.

i. Failure to provide Assurance of Ability to Complete Work as required under Section XII of this Consent Decree.

48. If Settling Defendants fail to submit notification of designation of Project Coordinators under Section XI of this Consent Decree, or fail to provide notices and submissions following the procedures described under Section XXIV of this Consent Decree, the Settling Defendants shall be liable for stipulated penalties in the amount of \$500 per violation for each day of noncompliance.

49. Defendants shall be liable for stipulated penalties in the amount of \$500 per violation for each day during which the Settling Defendants fail to comply with all other requirements of this Consent Decree.

50. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

51. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA shall give Settling Defendants written notification of their

failure to comply and describe the noncompliance. This notice shall also indicate the amount of penalties due and whether the penalties are continuing to accrue. However, penalties shall accrue as provided in the preceding paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

52. All penalties owed to the United States under this Section shall be due and payable within 30 days of the Settling Defendants' receipt from EPA of a notification of noncompliance, unless Settling Defendants invoke the Dispute Resolution procedures under Section XVII (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to the Environmental Protection Agency, Region IV, ATTENTION: Superfund Accounting, P.O. Box 100142, Atlanta, Georgia 30384 and shall reference CERCLA Number 4PA7 and DOJ Case Number 90-11-3-179A. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXIV (Notices and Submissions).

53. Neither the invocation of dispute resolution procedures under Section XVII (Dispute Resolution) nor the payment of penalties shall alter in any way Settling Defendants' obligation to complete the performance of the Obligations required under this Consent Decree.

54. Penalties shall continue to accrue as provided in Paragraphs 47, 48, and 49 of this Consent Decree during any

dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by decision or order of EPA which is not appealed to this Court, accrued penalties shall be paid to EPA within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties that the Court determines are owed to EPA within fifteen (15) days of receipt of the Court's decision or order, except as provided in subparagraph c below;

c. If the District Court's decision is appealed by any party, Settling Defendants shall pay all accrued penalties into the City Chemical Site Custody Account within fifteen (15) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the appellate court decision, the Custodian shall pay the amount of the accrued penalties to EPA or to Settling Defendants to the extent that they prevail.

55. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as late charges and interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue at the end of the thirty-day period referenced in Paragraph 52, at the rate established by the Department of

Treasury under 31 U.S.C. § 3717 and 4 C.F.R. 102.13. Settling Defendants shall further pay a handling charge of 1 percent (1%), to be assessed at the end of each 30-day late period, and a 6 percent (6%) per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due. However, nothing in this section shall be construed as prohibiting, altering, or in any way limiting the ability of Plaintiff to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

XIX. COVENANTS NOT TO SUE BY PLAINTIFFS

56. In consideration of the payments which will be made by the Non-De Minimis Defendants under this Consent Decree, the United States covenants not to sue the Non-De Minimis Defendants for Covered Matters. "Covered Matters" shall include any and all claims available to Plaintiff under Section 106 and 107(a) of CERCLA and Section 7003 of RCRA for the funding and performance of Remedial Design, for the funding and performance of Remedial Action, for the funding of O&M, for the performance of O&M except as provided in this Paragraph, and for the recovery of Past and Future Response Costs. With respect to future liability, this covenant not to sue shall take effect with respect to all Covered Matters except those related to performance of O&M upon final certification by EPA of the

completion of Remedial Action for the Site pursuant to Paragraph 32 of this Consent Decree. With respect to Covered Matters related to performance of O&M, this covenant not to sue shall take effect upon issuance of EPA's written determination that the Settling Defendants have complied with their Obligations to implement the O&M pursuant to the O&M Plan and Procedures and Requirements Document and Paragraph 6(b) of this Consent Decree.

57. For the purpose of this Section XIX, "Covered Matters" does not include:

(1) Liability arising from hazardous substances removed from the Site;

(2) Natural Resource damages;

(3) Criminal liability;

(4) Claims based on a failure by the Non-De Minimis Settling Defendants to meet the requirements of this Consent Decree;

(5) Liability for violations of federal law which occur during implementation of the Operation and Maintenance;

(6) Any claim that the United States may have against the Settling Defendants listed in Appendix 5 for Past Response Costs that were incurred by the United States prior to February 22, 1989 and that were not paid to the United States under the terms of the Consent Decree entered on that date by the United States District Court for the Middle District

of Florida in Civil Action No. 87-472-CIV-ORL-18. This reservation of rights applies only to the Settling Defendants listed in Appendix 5 and has no effect on any other Settling Defendant.

58. Notwithstanding any other provision in this Consent Decree, (1) the United States reserves the right to institute proceedings in this action or in a new action or to issue an order seeking to compel the Non-De Minimis Defendants to perform any additional response work at or adjacent to the Site, and (2) the United States reserves the right to institute proceedings in this action or in a new action seeking to reimburse the United States for its response costs relating to the Site if:

A. For proceedings prior to the EPA Certification of Completion of the Remedial Action,

(1) conditions at the Site, previously unknown to the United States, are discovered after the entry of this Consent Decree, or

(2) information is received, in whole or in part, after the entry of this Consent Decree, and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health and the environment.

B. For proceedings subsequent to EPA Certification of Completion of the Remedial Action,

(1) conditions at the Site, previously unknown to the United States, are discovered after the Certification of

Completion by EPA or,

(2) information is received, in whole or in part, after the Certification of Completion by EPA, and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health and the environment.

59. Notwithstanding any other provision in this Consent Decree, the Covenant Not To Sue set forth in this Section shall not relieve the Settling Defendants of their Obligation to meet and maintain compliance with the requirements set forth in this Consent Decree, including the conditions in the ROD, which are incorporated herein, and the United States reserves the right to take response actions at the Site in the event of a breach of the terms of this Consent Decree and to seek recovery of costs incurred after entry of the Consent Decree: (1) resulting from such a breach, (2) relating to any portion of the Work funded or performed by the United States, or (3) as a result of having to seek judicial assistance to remedy conditions at or adjacent to the Site.

60. Nothing in the Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person or other entity not a signatory of this Consent Decree for any liability it may have arising out of or relating to the Site. Plaintiff expressly reserves the right to sue any person or other entity other than the Settling Defendants, in connection with the Site.

XX. COVENANTS BY SETTLING DEFENDANTS

61. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States related to or arising from any response action taken with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111 or 112 or any other provisions of law, or to seek any other costs, damages or attorneys' fees from the United States arising out of response activities at the Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.185.

XXI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

62. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. This preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter,

transaction, or occurrence relating in any way to the Site against any person not a party hereto.

63. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42, U.S.C. § 9613(f)(2).

64. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing as soon as possible prior to the initiation of such suit or claim. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within ten (10) days of service of the complaint on them.

65. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based on any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case;

provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIX (Covenants Not to Sue By Plaintiffs).

XXII. ACCESS TO INFORMATION

66. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents, or the Custodian of the City Chemical Site Custody Account, relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, manifests, financial records, correspondence, or other documents or information related to Settling Defendants' Obligations under this Consent Decree. Settling Defendants shall also make available to EPA, for purposes of investigations, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of Settling Defendants' Obligations under this Consent Decree. The Settling Defendants may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Plaintiff continues to request such information despite an assertion of privilege by Settling Defendants, the obligation of the Settling Defendants to provide such information shall be determined by the Court upon filing of a motion by any of the parties.

67. Settling Defendants may assert business confidentiality

claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

68. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data and materials or information submitted pursuant to this Consent Decree, or any other documents or information evidencing conditions at or around the Site.

XXIII. RETENTION OF RECORDS

69. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Section XIII (Certification of Completion), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Settling Defendants' Obligations or liability of a Settling

Defendant for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Section XIII.

(Certification of Completion), Settling Defendants shall also instruct their contractors and agents and the Custodian of the City Chemical Custody Account to preserve all documents, records, and information of whatever kind, nature or description relating to the Settling Defendants' Obligations under this Consent Decree. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Plaintiff continues to request such information to dispute an assertion of privilege by Settling Defendants, the obligation of the Settling Defendants to provide such information shall be determined by the Court upon filing of a motion by any of the parties.

70. Each Settling Defendant hereby certifies, individually, that she, he or it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to her, his, or its potential

liability with regard to the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XXIV. NOTICES AND SUBMISSIONS

71. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed by certified mail, return receipt requested, to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

David Buente
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U. S. Department of Justice
10th and Pennsylvania
P. O. Box 7611
Ben Franklin Station
Washington, D. C. 20044
RE: DOJ # 90-11-3-179A

and

Patrick M. Tobin
Director, Waste Management Division
U. S. Environmental Protection Agency
Region IV
345 Courtland St., NE
Atlanta, Georgia 30365

As to EPA:

Diane Scott
EPA Project Coordinator
Waste Management Division
U. S. Environmental Protection Agency
Region IV
345 Courtland St., NE
Atlanta, Georgia 30365

Copies of checks and payment transmittal letter will also be sent to:

Will Waisner
Accounts Receivable Specialist
Financial Management Office
U. S. Environmental Protection Agency
Region IV
345 Courtland St., NE
Atlanta, Georgia 30365

As to the State:

Don Harris
State Project Coordinator,
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

As to the Settling Defendants:

Robert L. Rhodes, Jr., Esquire
Holland & Knight
Post Office Drawer 810
Tallahassee, Florida 32302

XXV. EFFECTIVE AND TERMINATION DATES

72. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XXVI. RETENTION OF JURISDICTION

73. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XVII (Dispute Resolution) hereof.

XXVII. APPENDICES

74. The following appendices are attached to and incorporated into this Consent Decree:

Appendix 1 is the ROD.

Appendix 2 is the Site map.

Appendix 3 is the form of the City Chemical Site Custody Agreement.

Appendix 4 is the list of Qualified Defendants and the De Minimis Settlement liability formula.

Appendix 5 is the list of Settling Defendants which did not sign the Consent Decree entered on February 22, 1989 in the United States District Court for the Middle District of Florida in Civil Action No. 87-472-CIV-ORL-18.

XXVIII. MODIFICATION

75. No modification shall be made to this Consent Decree without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States shall provide the State with a reasonable opportunity to review and comment on the proposed modification. No oral modification of this Consent Decree shall be effective.

XXIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

76. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

XXX. SIGNATORIES

77. Each undersigned representative of a Settling Defendant to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

78. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

79. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including, but not limited to, service of a summons, and any applicable local rules of this Court.

SO ORDERED THIS _____ DAY OF _____, 19____.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. City Industries, Inc., et al. relating to the City Industries/City Chemical Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

RICHARD B. STEWART
Assistant Attorney General
Environment and Natural Resources
Division
U. S. Department of Justice
10th & Pennsylvania
Washington, D. C. 20530

ROBERT W. MERKLE
United States Attorney

By: _____

GARY TAKACS
Assistant U.S. Attorney
Jacksonville, Florida

JAMES M. STROCK
Assistant Administrator for
Enforcement
U. S. Environmental Protection Agency
401 M Street, SW
Washington, D.C. 20460

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QUENTIN PAIR
Environmental Enforcement-Section
Environment and Natural Resources
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U. S. Department of Justice
10th & Pennsylvania
Washington, D. C. 20530
(202) 514-1999

FRANK S. NEY
Assistant Regional Counsel
U. S. Environmental Protection Agency
Region IV
345 Courtland St., NE
Atlanta, Georgia 30365
(404) 347-2641

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City Industries ,Inc., et al., relating to the City Industries Superfund Site.

FOR _____ COMPANY, INC. s/

Date: _____

[NAME -- Please type]
[TITLE -- Please type]
[ADDRESS -- Please type]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

NAME: _____
TITLE: _____
ADDRESS: _____

APPENDICES 1, 2, & 3

Appendix 1 will be the Record of Decision (ROD), dated March 29, 1990, issued in connection with the Site. It has previously been made available to the Members and is not reproduced to conserve time and cost. A copy of the ROD will be attached to the executed version of the Consent Decree provided to the Settling Defendants following completion of the settlement process.

Appendix 2 will be a Site map which is included in the ROD.

Appendix 3 is the form of the City Chemical Site Custody Agreement. This form is attached as Appendix G to the City Chemical Site Participation Agreement being provided to you simultaneously. Therefore, to conserve time and cost, is not reproduced here.

APPENDIX 4

PROCEDURES FOR CALCULATING DE MINIMIS SETTLEMENT PAYMENT

This Appendix 4 sets forth the procedure contemplated under Paragraph 11 of the Consent Decree whereby a Qualified Settling Defendant may determine the amount of money that it must pay to the City Chemical Site Custody Account to become a De Minimis Defendant. Attachment 1 to this Appendix 4 is a list of all Qualified Settling Defendants. For each Qualified Settling Defendant, Attachment 1 also contains an assigned percentage share of the De Minimis settlement amount. The amounts included in Attachment 1 have been adjusted to reflect orphan shares.

Each Qualified Settling Defendant who wishes to become a De Minimis Defendant will be required to pay into the City Chemical Site Custody Account its proportionate share of the sum of the estimated costs of Remedial Design, of the amount of the Initial Cost Estimate for Remedial Action and Operation and Maintenance, and an estimated amount of Future Response Costs. This amount would then be enhanced by a premium in the amount of one hundred percent (100%) because of the nature of the covenant not to sue provided by Plaintiff to De Minimis Defendants under this Consent Decree.

A Qualified Settling Defendant may calculate the specific amount due and payable to the City Chemical Site Custody Account pursuant to Paragraph 11 of the Consent Decree by using the following formula:

1. Calculate the "Total Base Amount" as follows:

[Amount of Initial Cost Estimate] + [(0.15) x (Initial Cost Estimate)]¹ + \$250,000² = Total Base Amount

2. Calculate the individual Qualified Settling Defendant's De Minimis Share as follows:

[Total Base Amount] x (Qualified Settling Defendant's percentage share from Attachment 1) x ²₃ = De Minimis payment under Paragraph 11e.

EXAMPLE: Qualified Defendant XYZ Corporation has a Share on Attachment 1 of .0500.⁴ Assume that the Initial Cost Estimate is \$6,000,000. XYZ Corporation would calculate its share as follows:

1. The Total Base Amount would be \$6,000,000 + \$900,000 + \$250,000 = \$7,150,000.

XYZ Corporation's payment would be calculated as follows:
\$7,150,000 x 0.0005 x 2 = \$7,150.

¹Future Response Costs, for the purposes of this formula only, are estimated at 15% of amount of the Initial Cost Estimate.

²Estimated Cost of RD.

³To reflect 100% premium.

⁴This is 0.05 of 1% or .0005%.

ATTACHMENT 1

DISCHARGER/PRP	GALLONS	% OF TOTAL
ABC LIQUORS	330	0.0404%
ACOPIAN	330	0.0404%
ACTION PLATING	550	0.0673%
ADAMS PACKING	275	0.0336%
AIRWORK	1265	0.1547%
ALPHA RESIN	5555	0.6794%
AMF POWERBOAT	3190	0.3902%
ANACONDA	990	0.1211%
ANILAM	990	0.1211%
ANTENNA	110	0.0135%
ASSOCIATED PACK	7425	0.9082%
BAUSCH LOMB	1100	0.1345%
BELFAB	1130	0.1382%
BLUE GOOSE	495	0.0605%
BMI TEXTRON	950	0.1162%
BONITA BOATS	159	0.0194%
BORDEN	4500	0.5504%
BOWMAR	265	0.0324%
BROWN BOVERI	1595	0.1951%
BURROUGHS	2145	0.2624%
CAMBRIDGE	30	0.0037%
CHEMCENTRAL	550	0.0673%
CHLORIDE	440	0.0538%
CHRYSLER	825	0.1009%
CIBA	220	0.0269%
COLLINS	605	0.0740%
COLORADO	4290	0.5247%
CONTINENTAL LAB	495	0.0605%
CONTROL	165	0.0202%
CORBAN	5995	0.7333%
CORDIS	7590	0.9283%
CORRECT	3256	0.3982%
COULTER	2585	0.3162%
CRITIKON	4400	0.5382%
CUTTLE	605	0.0740%
DAYTONA AUTO	495	0.0605%
DBA	55	0.0067%

DISCHARGER/PRP	GALLONS	% OF TOTAL
DELOACH	790	0.0966%
DICTAPHONE	4357	0.5329%
DIXIE FIBERGLASS	220	0.0269%
DIXIE PRECISION	165	0.0202%
DOCUMATION	4785	0.5853%
EASLEY	640	0.0783%
EAST COAST	550	0.0673%
ECKLERS	990	0.1211%
ELECTRIC MACH	220	0.0269%
ENDEAVOR	1045	0.1278%
ERNY	1925	0.2355%
EUSTIS	110	0.0135%
EX-CELLO	495	0.0605%
EXTRACORPOREAL	440	0.0538%
FELLSMERE	110	0.0135%
FL PACKAGE PRODUCT	165	0.0202%
FT. PIERCE	440	0.0538%
FW BELL	220	0.0269%
GABLES	275	0.0336%
GARRETT	2750	0.3364%
GENERAL ELECTRIC	5140	0.6287%
GRACEWOOD	495	0.0605%
GRAVES BROS	440	0.0538%
GREATER ORLANDO AV	55	0.0067%
GROFF GRAPHICS	880	0.1076%
GROW	4235	0.5180%
HARMSCO	1045	0.1278%
HENEFELT	220	0.0269%
HONEYWELL	1080	0.1321%
INDIAN R EXCHANGE	825	0.1009%
INDIAN R PACKING	165	0.0202%
INTERNATIONAL	1265	0.1547%
INTERPAK	1265	0.1547%
INVENEX	110	0.0135%
ITD IND	8030	0.9822%
ITT DEFENSE	565	0.0691%
ITT TELECOM	7926	0.9694%
JOHNSON	165	0.0202%
LAKE WALES	275	0.0336%
LD BRINKMAN	85	0.0104%
LEEDS NORTH	1130	0.1382%
MARCAR	55	0.0067%
METRETEK	367	0.0449%
MISENER	275	0.0336%

DISCHARGER/PRP	GALLONS	% OF TOTAL
MOHAWK	55	0.0067%
NCR	495	0.0605%
NIDA	275	0.0336%
NUMA	55	0.0067%
ORLANDO	37	0.0045%
OSOLO	275	0.0336%
OWENS	825	0.1009%
PACKERS INDIAN R	165	0.0202%
PALL LAND	165	0.0202%
PALM BEACH SOLID	1815	0.2220%
PALM BEACH NEWS	765	0.0936%
PALM BEACH SCHOOL	220	0.0269%
PARADYNE	3004	0.3674%
PARKSON	2200	0.2691%
PASSIVE	110	0.0135%
PENN MOTOR	275	0.0336%
PET CHEM	8570	1.0482%
PETERSON	2700	0.3302%
PHOENIX	495	0.0605%
POLYGUARD	8195	1.0023%
POLYPLASTEX	5050	0.6177%
POULIOT	1760	0.2153%
PPC	2365	0.2893%
PRE-DELIV	1600	0.1957%
QUADRA TEC	410	0.0501%
QUALITY FIBERGLASS	110	0.0135%
QWIP	4090	0.5003%
REXNORD	1567	0.1917%
RCA SOLID STATE	3961	0.4845%
REX HEAT	2970	0.3633%
REYNOLDS	1210	0.1480%
RGM	100	0.0122%
RIVERFRONT	165	0.0202%
RONEL	4300	0.5259%
SANGAMA-W	7315	0.8947%
SENSORMATIC	2915	0.3565%
S-H FAB	1155	0.1413%
SICMA	110	0.0135%
SMITHS IND	110	0.0135%
SOF FORM	3727	0.4559%
SOSSNER	4785	0.5853%
SPARTAN	8580	1.0494%
SPERRY U	7040	0.8611%
SPRAGUE	4565	0.5584%

DISCHARGER/PRP	GALLONS	% OF TOTAL
STD BUMPER	330	0.0404%
ST. LUCIE	550	0.0673%
SUN AIR	880	0.1076%
SWIM IND	1375	0.1682%
TAPE-LABEL	7400	0.9051%
TELEFLEX	495	0.0605%
TELTRONICS	1540	0.1884%
TEXACO USA	2000	0.2446%
TRI-TECH	440	0.0538%
TRW	2365	0.2893%
TUXEDO	110	0.0135%
UNIJAX	5335	0.6525%
UNION CARB	4565	0.5584%
UNITED TECH	2310	0.2825%
VALBRO	30	0.0037%
UNIVIS	5730	0.7008%
VISTAKON	880	0.1076%
VITA STAT	165	0.0202%
VRN	880	0.1076%
WATERCRAFT	7590	0.9283%
WEATHER KING	275	0.0336%
WEATHER WICKER	3520	0.4305%
WEST CO	4290	0.5247%
WESTINGHOUSE	3760	0.4599%
WHEELBLAST	165	0.0202%
WINTER GARD	110	0.0135%
WINTER HAVEN	55	0.0067%
WORTH CHEM	1925	0.2355%
XERXES (nka DARIUS CORP)	7480	0.9149%
	289941	35.4632%

APPENDIX 5

List of names of Settling Defendants that did not enter into earlier cost recovery settlement with EPA will be set forth in this Appendix.